UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
21st meeting
held on
Friday, 25 October 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 21st MEETING

Chairman: Mr. AFONSO (Mozambique)

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91-56816 5119S (E)

Distr. GENERAL
A/C.6/46/SR.21
8 November 1991
ENGLISH
ORIGINAL: SPANISH

The meeting was called to order at 10.10 a.m.

AGENDA ITEM 129: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FOURTH SESSION (continued)

Report of the Secretary-General on possible ways of assisting developing countries to attend meetings of the United Nations Commission on International Trade Law (A/46/349)

1. Mr. SANDOVAL (Ecuador), speaking also on behalf of Barbados, Bolivia, Colombia, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Trinidad and Tobago, Uruguay and Venezuela, expressed his appreciation to the Secretary-General for the useful report on the question (A/46/349).

2. In his view, to the extent that many developing countries were unable to take part in the work of the United Nations Commission on International Trade Law (UNCITRAL), the Commission would have serious difficulties in complying fully with its mandate. If the current trend continued, with limited participation by those countries, it would have to be recognized that the documents produced merely reflected the points of view of certain regional groups which had their own interests; such a situation would conflict with the concept of universality which should govern the Commission's work. Both the Secretary-General, in his report, and the Chairman of UNCITRAL, in introducing the report on the work of the Commission's twenty-fourth session (A/46/17), had recognized the existence of the problem and the necessity of attempting to overcome it, explaining that the limited participation by the developing countries was not due to any lack of interest but rather to financial constraints.

3. Some corrective measures were suggested in the report of the Secretary-General, such as the provision of assistance solely to least developed countries. That proposal would not fully solve the problem, as it would favour a small number of States and would be of little benefit to the majority of Latin American and Caribbean countries. With regard to other ideas contained in the report, it would at least be necessary to pay travel expenses for one representative of each of the developing countries that were members of the Commission and, instead of limiting participation to some of the meetings of the working groups, to consider reducing costs through administrative measures, such as holding several sessions of the working groups consecutively or in one place.

4. Lastly, he summarized his views as follows: (a) assistance should be provided to all the developing countries that were members of UNICTRAL; (b) travel expenses, at least, should be paid for one representative of each developing country, who should participate in all the meetings of the Commission and of its working groups; (c) consideration should be given to the possibility of economizing by holding meetings in one place; and

(Mr. Sandoval, Ecuador)

(d) consideration should be given to the possibility of holding consecutive meetings of the working groups in order to minimize travel by experts.

5. Mr. BEKELE (Ethiopia), speaking on behalf of the Group of African States, drew attention to General Assembly resolution 2205 (XXI) by which UNCITRAL had been established, and to paragraph 9, stating that, in its work, the Commission should bear in mind the interests of all peoples, and particularly those of developing countries. In order to achieve that objective, it was essential that developing countries should be adequately represented in all the deliberations of the Commission. It was obvious that the limited participation of those countries in the elaboration of conventions and of other international legal instruments would hamper their subsequent adoption and application.

6. The report of the Secretary-General stated that the participation of experts from developing countries had been low and not always consistent (A/46/349, para. 8). It should be recognized that the nature of the Commission's work required the services of experts and that the developing countries must be financially assisted so that they could send representatives to all the meetings of UNCITRAL. That need had been recognized both by the Secretary-General in his report and by the Chairman of UNCITRAL in introducing the Commission's report. With regard to the type and the number of meetings, the Group of African States believed that it would be desirable to have representation at all meetings of the Commission and of its working groups, as they were of equal importance.

7. While aware that final decisions on budgetary matters were the prerogative of the Fifth Committee and not of the Sixth Committee, the Group of African States none the less believed that it was appropriate for the Sixth Committee to make a positive recommendation on the question under discussion and to include it in the resolution dealing with the UNCITRAL report.

8. Mrs. NAZIHAH MOHAMMED RUS (Malaysia) said that her delegation fully supported the proposal contained in the report of the Secretary-General (A/46/349) to assist developing countries that were members of the Commission so that they could participate actively in its work. In reality, all countries were dependent on international trade as part of their economic activity. Hence in 1966, the United Nations had entrusted UNCITRAL with the progressive harmonization and unification of international trade law, bearing in mind the interests of all peoples, and particularly those of developing countries, in the extensive development of international trade.

9. Since its establishment, UNCITRAL had made commendable contributions in fulfilling its mandate. However, it was unclear whether the developing countries had participated fully in the elaboration of legal instruments or whether, as indicated in document A/46/349, their participation had been low and not always consistent. According to the report, the relatively low incidence of participation had not been due to any lack of interest on the

(Mrs. Nazihah Mohammed Rus, Malaysia)

part of developing countries but rather to financial constraints. There was, therefore, a valid reason to support the proposal to assist those countries.

10. While financial constraints might be a dominant reason for the low incidence of participation, the lack of experts in trade law might also be a contributing factor. In that connection, Malaysia proposed that the United Nations Institute for Training and Research (UNITAR) should conduct training programmes tailored to the needs of developing countries. The multitude of activities under the purview of international trade required greater harmonization and coordination by all countries, developed and developing alike. UNITAR could play an important role by organizing programmes and seminars at the regional level, for example, which would enable participants from the developing countries to become more familiar with international trade law. Furthermore, such programmes would make an important contribution to the United Nations Decade of International Law.

11. Mr. WOOD (United Kingdom) said that he had listened to the previous statements with a great deal of interest and had agreed with them to a large extent. He believed that all States members of the Commission, and in particular the developing countries, should be represented at its meetings. He shared the view of the delegation of Ecuador that, if the Commission was not fully representative and if the current trend continued, there was a risk that conventions would be adopted which did not take into account the general interest. Fortunately, that did not appear to have happened to date.

12. The United Kingdom delegation believed that all aspects of the question should be explored. Perhaps there were non-financial means of assisting the developing countries. For example, as other speakers had suggested, consideration could be given to ways of rationalizing the Commission's meeting schedule with a view to minimizing its financial implications, which affected all States in general.

13. With regard to the ideas set out in the report of the Secretary-General (A/46/349), he wished to make the following three comments. First, as the Ethiopian delegation had recognized, budgetary matters came under the jurisdiction of other bodies. Thus, the General Assembly, in its resolution 45/248 B, had recently underscored the special role of the Fifth Committee in that area. Secondly, he drew the Committee's attention to document A/46/349, paragraph 16, which specifically referred to the provisions of that resolution concerning arrangements in regard to the payment of subsistence allowance and the standard of air travel by representatives of Member States in their offical capacity and their review by the General Assembly at the current session. Lastly, he said that, while all States recognized the importance of the issue and wished to cooperate with UNCITRAL to the extent possible, the question could not be dealt with in isolation. The United Nations had a general financial policy, as reflected in the above-mentioned resolution 45/248 B, which was still applicable to the specific question under discussion.

(Mr. Wood, United Kingdom)

14. An immediate and practical step would be to remit to the Fifth Committee, either directly or through the secretariat, both the report of the Secretary-General (A/46/349) and a complete summary of the current debate in order to ensure that the matter was considered in a timely manner by the competent bodies. The Committee could then resume its consideration of the matter at a later stage.

15. In conclusion, he made the following observations, which he said should be considered as preliminary at the current stage: (a) it would be difficult to resolve the problem with resources from the regular budget of the United Nations; (b) if a solution were to be found, it would probably cover only the least developed countries, in conformity with the usual practice; (c) his delegation did not support the idea of establishing a fixed number of States from each of the regional groups; (d) consideration should be given to the idea of establishing a trust fund for the purpose, despite the risk of encouraging the proliferation of funds of that nature. Moreover, there could be other funds, trust or otherwise and within or outside the United Nations system, to which recourse could be had. In that connection, the International Trade Centre UNCTAD-GATT, whose headquarters were in Geneva, had several funds which could perhaps be used for that purpose.

16. Mr. GIANG (Viet Nam) welcomed the inclusion of item 129 in the agenda. The formation of a legal framework for international relations was of extreme importance for the promotion of international trade and UNCITRAL had made a significant contribution to the codification of international trade law. Broader participation in the work of UNCITRAL, not only on the part of representatives of Member States but also of observers from other countries, could speed up its work and ensure that the legal instruments elaborated by the Commission were universally recognized. The assistance, especially financial assistance provided by the United Nations to developing countries to enable them to attend the Commission's meetings was indispensable and important not only to the developing countries but also to the Commission itself. He therefore welcomed the report of the Secretary-General on the subject (A/46/349) and shared the view expressed by several countries in the Commission that the United Nations should provide financial assistance to the developing countries that were members of the Commission so that they could attend the Commission's meetings.

17. He also shared the opinion of other developing countries that the Commission should facilitate the participation of such countries in its work by increasing the number of its meetings and those of its working groups held in New York, so that delegates from the permanent missions of those countries could attend. The rationalization of the Commission's meetings would be easy to implement and would constitute concrete and effective assistance to developing countries. He therefore hoped that the proposal would be borne in mind by the Secretary-General and by the Commission.

18. Mr. ALVAREZ (Uruguay) said that the report of the Secretary-General (A/46/349) showed clearly that an extremely serious problem existed. It was a matter of deep concern that only the developed countries could send experts to the regular sessions of the Commission and particularly to meetings of its working groups. The non-attendance of experts from the developing countries was a serious shortcoming, since a significant contribution of legal thought was missing and a large majority of the States which would have to use trade law in their trading relations were absent. It would therefore be very helpful if assistance could be provided for that purpose to all developing countries that were members of the Commission, and not only to the least developed. Ideally, such assistance should cover all meetings of the Commission; nevertheless, in view of the financial considerations, he would support a solution which covered attendance at one or two meetings of the working groups, giving States the possibility of choosing, in accordance with their particular interests, the meeting which they would attend. Only travel expenses should be covered.

19. Mr. SCHARF (United States of America) expressed his sympathy regarding the problem of financing the travel of experts from developing countries to the Commission's meetings and recalled that the United States had made a voluntary contribution to facilitate the participation of such experts in an UNCITRAL seminar held in Lesotho in 1986. However, the issue raised complex budgetary questions and should therefore be considered in the context of other similar cases and of the budget as a whole, in the Fifth Committee. The United States neither supported nor opposed at the current stage any of the proposals contained in the report. It would have no difficulty in accepting a system of voluntary contributions, without excluding other possibilities and without prejudging the form of such a system. Paragraph 16 of the report of the Secretary-General (A/46/349) indicated that, in conformity with General Assembly resolution 45/248, those very questions would be considered by the Fifth Committee and by the Advisory Committee during the current session, and it would therefore be inappropriate for the Sixth Committee to adopt measures outside of that framework, particularly since observance of the appropriate procedure would entail no delay. He wished to propose that the Fifth Committee should be asked for guidance on the matter before any resolution was adopted.

20. Mr. WOOD (United Kingdom) proposed that the Secretary of the Committee should be requested to inform the organs responsible for the implementation of the resolution mentioned in paragraph 16 of the report of the Secretary-General (A/46/349) of the matter and of the opinions expressed at the meeting in order to ensure that when the subject was considered they would be aware of the problem and of the Committee's support for UNCITRAL as well as of the Committee's interest in ensuring that all members of UNCITRAL participated in its work.

21. Mr. HANAFI (Egypt) said that the subject was very important and that before instructions were given to any organ the matter should be submitted to the Fifth Committee. He also hoped that the Chairman would hold consultations before any decision was taken on the matter.

22. Mr. PIZA (Costa Rica) said that his delegation supported the statement made by the representative of Ecuador.

AGENDA ITEM 135: DEVELOPMENT AND STRENGTHENING OF GOOD-NEIGHBOURLINESS BETWEEN STATES (A/C.6/46/L.5)

23. The CHAIRMAN said that a consensus had been reached on the draft resolution on the item entitled "Development and strengthening of good-neighbourliness between States", which had been circulated as document A/C.6/46/L.5, and proposed that the Committee should take a decision on the draft at the beginning of the following meeting. If he heard no objection, he would take it that the Committee accepted his proposal.

24. It was so decided.

The meeting rose at 11.15 a.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
22nd meeting
held on
Monday, 28 October 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 22nd MEETING

Chairman: Mr. AFONSO (Mozambique)

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AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION

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91-56846 5138S (E)

Distr. GENERAL
A/C.6/46/SR.22
12 November 1991
ENGLISH
ORIGINAL: SPANISH

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The meeting was called to order at 10.20 a.m.

AGENDA ITEM 135: DEVELOPMENT AND STRENGTHENING OF GOOD-NEIGHBOURLINESS BETWEEN STATES (continued) (A/C.6/46/L.5)

1. The CHAIRMAN said that several delegations had requested to speak on draft resolution A/C.6/46/L.5 after the conclusion of the debate on the agenda item, rather than at the current meeting. Accordingly, he suggested that, for the time being, no decision should be adopted on the draft resolution and that consultations should continue with a view to reaching a common position on the question.

2. If he heard no objections, he would take it that the Committee wished to adopt his suggestion.

3. It was so decided.

AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION (A/46/10, A/46/405)

4. Mr. KOROMA (Chairman of the International Law Commission), introducing the report of the International Law Commission (A/46/10), said that the Commission viewed its mandate to codify and progressively develop international law as embracing various issues which affected the future of mankind and which occasionally went beyond national jurisdiction. The Sixth Committee had helped to foster such an interpretation by the Commission of its mandate. Hence, the Commission attached great importance to maintaining a fruitful dialogue with the Committee, which explained the presence of members of the Commission at the current session.

5. As indicated in paragraph 9 of the report, the Commission had concluded its consideration of the topic "Jurisdictional immunities of States and their property" and had adopted the final version of the draft articles on the topic at its forty-third session. It had also provisionally adopted draft articles on two other topics on its agenda, namely, "The law of the non-navigational uses of international watercourses" and "Draft Code of Crimes against the Peace and Security of Mankind". For the first time, the Commission had submitted to the Assembly, in the same report, one final set of draft articles adopted on second reading and two provisional sets of draft articles adopted on first reading. Furthermore, in 1989 a set of draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier had been submitted to the General Assembly. That record showed that the Commission had achieved all the goals which it had set for itself at the beginning of its term of office.

6. The major difficulty which the Commission had faced in connection with the topic "Jurisdictional immunities of States and their property" had been the need to reconcile the divergent views between those countries advocating

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absolute State immunity and those favouring limited immunity. The Commission had decided not to initiate a doctrinal debate but rather to concentrate on identifying those activities in relation to which it was widely agreed that State immunity could not be invoked. The difficulty in formulating generally acceptable texts had been compounded by the existence of treaty law and domestic legislation and jurisprudence which had offered diverse and sometimes conflicting solutions.

7. With regard to the specific content of the draft articles on jurisdictional immunities of States and their property, it should be noted that, on second reading, a major change had been made in article 2, which consolidated original articles 2 and 3 as provisionally adopted on first reading. The new article 2 spelled out the special understanding of the term "State" for the purposes of the draft articles. However, the general terms used in describing the concept of "State" did not imply that the provision was an open-ended formula. The term "State" should be understood in the light of its object and purpose, namely, to identify those entities or persons entitled to invoke State immunity where a State could claim immunity, and to identify certain entities and subdivisions of a State that were entitled to invoke immunity when performing acts in the exercise of sovereign authority. Accordingly, the term "State" should be understood as comprehending all types or categories of entities and individuals so identified in the draft articles which might benefit from immunity.

8. Article 2, paragraph 1 (b) contained two new elements. The first was the reference to the constituent units of a federal State, which took into account the fact that, in some federal systems, the constituent units were distinct from political subdivisions and enjoyed, for historical reasons, the same immunities as the State. The second new element was the mention of "other entities", which was intended to cover non-governmental entities endowed, in exceptional cases, with governmental authority. Accordingly, account was taken of the practice followed with relative frequency after the Second World War and still followed to some extent in recent times, whereby the State entrusted a private entity with certain governmental authority to perform acts in the exercise of the sovereign authority of the State. When private entities performed such governmental functions, they should be regarded as "States" for the purposes of the draft articles.

9. Part II of the draft articles dealt with the immunity which every State enjoyed, in respect of itself and its property, from the jurisdiction of the courts of other States. The text did not indicate whether the draft articles should be regarded as codifying the rules of existing international law.

10. Articles 6 to 9 had been clarified in various respects but had not undergone major changes. In article 6, an attempt had been made to identify the content of the obligation to give effect to State immunity and the modalities for giving effect to that obligation. Articles 7, 8 and 9 dealt with the concept of "consent" in relation to jurisdictional immunity and with

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the various forms in which such consent could be expressed. What was of essence in that context was the presumption of the lack of consent on the part of the State against which the court of another State had been asked to exercise jurisdiction. On the other hand, the articles embodied the principle that the obligation of one State to refrain from subjecting another State to its jurisdiction was not an absolute obligation, but was clearly conditional upon the absence or the lack of consent of the State against which the exercise of jurisdiction was being sought.

11. The title of Part III, as provisionally adopted on first reading, had highlighted the divergent views between the proponents of restrictive immunity and of absolute immunity, who had proposed the titles "Limitations on State immunity" and "Exceptions to State immunity", respectively. The title adopted on second reading reflected a pragmatic approach intended to meet all concerns.

12. The main change which had been introduced in Part III on second reading consisted of a new article 10, paragraph 3, dealing with State enterprises or other entities established by the State which engaged in commercial transactions on their own behalf and not on behalf of the State. Under paragraph 3, such State entities could be sued before the courts of another State in the event of differences arising from a commercial transaction. Since the State was not a party to the transaction, its immunity was not affected. Paragraph 3 set out a legal distinction between a State and some of its entities in the matter of State immunity from jurisdiction. In some economic systems, commercial transactions as defined in article 2, paragraph 1 (c), were normally conducted by State enterprises or by other entities established by a State which had independent legal personality. The manner in which State enterprises or other entities were established differed according to the legal system of a State. However, as a rule, such enterprises engaged in commercial transactions on their own behalf, as separate entities from the parent State, and not on behalf of the State.

13. The text of article 10, paragraph 3, was the result of lengthy discussion in the Commission. Initially, it had been proposed that an independent article should be drafted, relating to State enterprises with segregated property. However, during the Commission's debate on the proposal, some members had stated that the provision was of limited application, as the concept of segregated property was unique to the socialist States and should not be included in the draft articles. However, other members had been of the view that the question of State enterprises performing commercial transactions as separate and legally distinct entities from the State had a much wider application, as it was also highly relevant to developing countries and even to many developed countries. They had maintained that the draft articles should distinguish between such enterprises and the parent State in order to avoid the abuse of judicial process against the State. Taking into account those views, the Commission had adopted the current formulation, which included not only State enterprises with segregated property but also any

other enterprises or entities established by the State which engaged in commercial transactions on their own behalf, had independent legal personality and satisfied the requirements specified in subparagraphs (a) and (b). The Commission had further agreed to the inclusion of the provision in article 10, rather than as an independent article, since article 10 dealt with "commercial transactions".

14. Although not specifically dealt with in the draft articles, fiscal matters should be borne in mind in relation to the provisions of article 10. Those matters had been dealt with in the version of article 16 provisionally adopted on first reading. Reservations had been expressed with regard to the article because it violated the principle of the sovereign equality of States by allowing a State to institute proceedings in its own courts against another State. A proposal had been made for the deletion of the article on the ground that the provision referred only to the relations between two States, i.e. the forum State and the foreign State, and to a bilateral international problem governed by existing international law. In contrast, the draft articles dealt with the relations between a State and foreign natural or juridical persons, with the purpose of protecting the State against certain actions brought against it. Accordingly, the provision was not thought to have its proper place in the draft articles. The deletion of the article had also been opposed on the ground that the provision was based on an extensive legislative practice and had been adopted on first reading. It was finally decided to delete the former article 16 on the understanding that the commentary to article 10 would explain that the deletion should not be interpreted to mean that a State might invoke immunity in a proceeding before a court of another State which related to fiscal obligations arising from commercial transactions. The non-immunity of a State under article 10, paragraph 1, in connection with commercial transactions was thus extended to fiscal matters arising from commercial transactions.

15. The remaining articles of part III had not undergone major changes, although some of them had been clarified or technically improved. In connection with the present article 16 it must be pointed out that some members of the Commission had raised the question of State-owned or State-operated aircraft engaged in commercial service, as well as the question of space objects. The Commission recognized the importance of those questions but felt that they called for more time and study. Taking into account the view expressed in the Sixth Committee that measures of nationalization, as sovereign acts, were not subject to the jurisdiction of national courts, the Commission had deleted the text of article 20 as adopted on first reading. It had also decided to delete article 28 concerning non-discrimination, which had been adopted on first reading, on the ground that it was better to deal with that topic within the framework of general international law and treaty law.

16. With the adoption of those draft articles the Commission had thus resolved the two outstanding issues relating to State enterprises and the definition of the concept of State. The Commission had felt that dispute settlement procedures could be left to a later stage.

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17. In accordance with its statute, the Commission submitted the draft articles to the General Assembly, together with the recommendation that an international conference of plenipotentiaries should be convened to examine the text and conclude a convention on the topic. The Commission had adopted on first reading a complete set of draft articles on the law of the non-navigational uses of international watercourses. The topic had been included in the Commission's programme of work in response to a recommendation of the General Assembly dating back to 1970. The need to draft rules on the equitable utilization, conservation and protection of international watercourses had become even more urgent since that date. Forty per cent of the world's population depended on the 214 basins of international watercourses shared by two or more countries; 12 of those basins were shared by five or more countries; the frequency of disputes had increased.

18. At the last session attention had been focused in particular on the definition of an international watercourse. The Commission had been proceeding on the basis of a provisional working hypothesis adopted in 1989. The definition now before the Committee described a watercourse as "a system of surface and underground waters", a phrase which encompassed rivers, lakes, aquifers, glaciers, reservoirs and canals but excluded confined groundwater unrelated to any surface water. The definition required that the surface and underground waters should flow into a common terminus. The term "international watercourse" was defined as a watercourse, parts of which were situated in two or more States. Finally, the definition of "watercourse State", previously adopted as a separate provision, had been incorporated in the article on use of terms.

19. Article 10 set forth the general principle that no use of an international watercourse enjoyed inherent priority over other uses and provided guidelines for resolving possible conflicts between different uses.

20. Articles 26, 27 and 28 dealt respectively with management, regulation and protection of installations. Article 26 was concerned with the prevention and mitigation of a wide variety of conditions related to international watercourses that might be harmful to watercourse States. Article 27 dealt with the obligations of watercourse States in responding to emergency situations. Under article 28 watercourse States were required to employ their best efforts, within their respective territories, to maintain and protect installations, facilities and other works related to an international watercourse. The three provisions emphasized the duty of States to cooperate.

21. Article 29, dealing with international watercourses and installations in time of armed conflict, served as a reminder that the principles and rules of international law applicable to armed conflicts contained provisions relevant to international watercourses.

22. Article 32 provided that watercourse States must not discriminate on the basis of nationality or residence in granting access to their judicial or other procedures to the victims of an activity related to an international watercourse. The article did not require watercourse States to provide a right to compensation for the appreciable harm suffered as a result of such an activity.

23. At the Commission's request, the Secretariat had prepared an informal consolidated version of all the articles and of the commentaries thereto in order to facilitate the task of Governments in preparing the comments and observations which the Commission had requested them to submit through the Secretary-General.

24. The Commission had completed in 1991 the first reading of the draft Code of Crimes against the Peace and Security of Mankind. In paragraph 3 of its resolution 45/41 the General Assembly had invited the Commission to consider further and analyse the issues raised in its report concerning the question of an international criminal jurisdiction, including the possibility of establishing an international criminal court or other trial mechanism. As could be seen from paragraphs 106 to 165 of the report, the Commission had discussed various aspects of the issue, including the nature and extent of the jurisdiction envisaged, the jurisdiction ratione materiae, the conferment of jurisdiction, and the institution of criminal proceedings.

25. At its last session the Commission had incorporated in part I of the draft Code new provisions dealing with definitions and general principles. Article 3, paragraph 1, on responsibility and punishment, limited criminal responsibility to individuals to the exclusion of States. The paragraph should be read in conjunction with article 5, which provided that prosecution of an individual did not relieve a State of any responsibility under international law for an act or omission attributable to it. Article 3, paragraph 2, defined complicity as aiding, abetting or providing the means for the commission of a crime. With regard to conspiracy, the punishable conduct was participation in a common plan for the commission of a crime against the peace and security of mankind. Incitement constituted one of the elements of the 1954 draft Code and was also covered in the Genocide Convention. Paragraph 3 defined attempt in terms of the following elements: (a) intent to commit a particular crime; (b) an act designed to commit it; (c) the possibility of committing it; and (d) non-completion of the crime for reasons independent of the perpetrator's will. It was necessary to draw to the Committee's attention the phrase appearing in square brackets in paragraph 3, for it signalled a divergence of views between those members who considered that attempt should be punishable only in the case of specific crimes and those who felt that no distinction should be made between the various crimes covered by the Code.

26. With regard to article 12, the fact that a crime against the peace and security of mankind had been committed by a subordinate did not relieve his superiors of criminal responsibility. Article 11 referred to the question of

(Mr. Koroma)

whether an order given by a superior for the commission of a crime relieved the subordinate of responsibility. Article 11 answered the question in the negative if, under the circumstances at the time, it had been possible for the subordinate not to comply with the order.

27. Article 14 combined the criminal law concepts of defences and extenuating circumstances. The article was tentative and would have to be re-examined on second reading. The views of Governments in that area would be welcome.

28. The definition of the crime of genocide contained in article 19 was based entirely on the definition provided by article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The crime was composed of two elements: (a) the commission of one or more of the acts listed in the article; and (b) the intent to destroy, in whole or in part, one of the groups protected by the article. As in the case of the 1948 Convention, the article embodied the concepts of "physical" and "cultural" genocide.

29. Article 20 dealt with the crime of apartheid. The definition contained in the draft article was based on article II of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid. However, for technical reasons, examples had been removed from the definition and the scope of the draft articles was not limited, as in the case of the 1973 Convention, by references to southern Africa.

30. Article 21 concerned systematic or mass violations of human rights. The factor common to all the acts constituting crimes under the article was a serious violation of certain fundamental human rights. The text took into account the considerable development in the protection of human rights since the 1954 draft Code, both in the elaboration of international instruments and in the bodies which implemented them, as well as in the universal awareness of the pressing need to protect such rights. Under the article only systematic or mass violations of human rights would be a crime. The systematic element related to a constant practice or to a methodical plan to carry out such violations. The mass-scale element related to the number of people affected by such violations or to the entity which had been affected. Isolated acts of murder or torture, and so on, did not come under the draft Code. Consequently, each of the subparagraphs concerning the criminal acts should be read in conjunction with the chapeau of the article.

31. The text of article 22 on exceptionally serious war crimes represented a compromise between two trends, namely, one towards a general definition of war crimes, and one which favoured the inclusion of as detailed a list as possible of all war crimes covered by the article. The chapeau of paragraph 2 set out a general definition, followed by an exhaustive enumeration of the categories of war crimes concerned. The war crimes covered by the article were not all war crimes in the traditional sense, nor were they grave breaches covered by the relevant common articles of the 1949 Geneva Conventions. Faithful to the

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criterion of exceptional seriousness, the Commission had selected violations of international law applicable in armed conflicts which should be crimes under a code of that nature. Hence, the fact that a particular war crime in the traditional sense under humanitarian law or a grave breach within the meaning of the Geneva Conventions or the Additional Protocol was not covered by the article in no way affected the fact that they were crimes under the international law applicable in armed conflicts.

32. A war crime within the meaning of the article necessarily entailed: (a) that the act constituting a crime should fall within any one of the six categories in paragraphs 2 (a) to (f); (b) that the act should be a violation of the principles and the rules of international law applicable in armed conflicts; and (c) that the violation should be exceptionally serious. The seriousness of the violation was marked, to a great extent, by the seriousness of the effects of the violation. The six categories were exhaustive even though it fell to the court to determine or to assess whether some acts or omissions fulfilled the character of exceptional seriousness for each category. That also left some possibility for the progressive development of the international law applicable in armed conflicts.

33. Article 26 dealt with wilful and severe damage to the environment. The Commission's concern regarding harm to the environment had already been reflected in the adoption on first reading of article 19 on State responsibility. Under paragraph 3 (d) of the article, "the safeguarding and preservation of the human environment" was already regarded as one of the fundamental interests of the international community. The Commission had taken the view that the protection of the environment was of such importance that some particularly serious attacks against that fundamental interest of mankind should come under the Code and that the perpetrators should incur international criminal responsibility.

34. Article 26 applied when three elements were involved. First, damage to the "natural environment"; secondly, "widespread, long-term and severe damage"; and, lastly, the damage must be caused "wilfully". He drew the Committee's attention to paragraph (6) of the commentary which referred to the word "wilfully" contained in the draft article. That word referred to the express aim or the specific intention of causing damage. It excluded from the scope of the article not only cases of damage caused by negligence but also those caused by deliberate violation of regulations forbidding or restricting the use of certain substances or techniques if the express aim or the specific intention was not to cause damage to the environment. Some members of the Commission had found that solution to be open to criticism. In their view, article 26 conflicted with article 22 on war crimes, which also dealt, in its paragraph 2 (d), with the protection of the environment. Under article 22, it was a crime not only to employ methods or means of warfare that were intended to cause damage, but also those which might be expected to cause damage, even if the purpose of employing such methods or means had not been to cause damage to the environment.

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35. The Commission, which had adopted a standard format for identifying the persons to whom responsibility for each of the crimes listed in the Code could be attributed, had worked out three types of solutions, depending on the nature of the crime concerned. In its view, some of the crimes defined in the Code, namely, aggression (art. 15), threat of aggression (art. 16), intervention (art. 17), colonial domination (art. 18) and apartheid (art. 20) were always committed by, or on orders from, individuals occupying the highest decision-making positions in the political or military apparatus of the State or in its financial or economic life. For those crimes, the Commission had restricted the circle of potential perpetrators to leaders and organizers, the phrase which was found in the Charter of the Nürnberg Tribunal and in the Charter of the Tokyo Tribunal. A second group of crimes, namely, the recruitment, use, financing and training of mercenaries (art. 23) and international terrorism (art. 24), came under the Code whenever agents or representatives of a State were involved therein. A third group of crimes, i.e. genocide (art. 19), systematic or mass violations of human rights (art. 21), exceptionally serious war crimes (art. 22), illicit drug trafficking (art. 25) and wilful and severe damage to the environment (art. 26), would be punishable under the Code by whomever they were committed. The provisions on perpetrators must be read in conjunction with article 3 on complicity, conspiracy and attempt.

36. With regard to the question of penalties, the Commission had decided to defer that question to the second reading of the draft. Some members had believed that the question should not be dealt with in the Code and that it should be left to domestic law. Others insisted that the question of penalties should be addressed. Among them, some had advocated the inclusion of a scale of penalties which would be applicable to all crimes, while others had favoured accompanying the definition of each crime with an indication of the corresponding penalty. Different views had also been expressed with regard to the type of applicable penalties, as reflected in paragraphs 83 to 99 of the report. The Commission had not attempted, at the current stage, to reconcile those divergent views, which could be addressed on second reading, with full knowledge of the various possible approaches.

37. Lastly, it should be noted that, pending the receipt of the comments of Governments, the draft no longer maintained a distinction between crimes against peace, war crimes and crimes against humanity.

38. The Commission was aware that some important issues connected with the Code were still outstanding. The views of Governments on those issues, as well as on the articles as provisionally adopted, would be most helpful at the second reading stage.

39. Turning to chapter V of the report, on the topic "International liability for injurious consequences arising out of acts not prohibited by international law", he said that the Special Rapporteur, Mr. Julio Barboza, had felt that there was merit in raising in his seventh report a number of basic questions

which must receive a clear answer if the future draft was to rest on solid foundations. The topic was particularly important from the perspective of environmental concerns, where no general principles of liability had been agreed upon, as yet. The Commission's work in that area would therefore fill a significant lacuna. Another general point raised in the Commission had been the need to pay special attention to the situation of developing countries, which were often insufficiently equipped to determine the potential harmfulness of a specific activity and lacked the financial resources needed to compensate the damage if it occurred.

40. Among the main issues raised by the Special Rapporteur were, first, the question whether the future instrument should focus on activities causing transboundary harm or also encompass activities posing a risk of transboundary harm and, second, the related question whether prevention should be considered as forming part of the topic. Many members of the Commission tended to answer both questions in the affirmative.

41. The basic principles on which the future instrument should rest were generally considered to include the following: the principle sic utere tuo ut alienum non laedas, the principle that the innocent victim should not be left to bear the loss alone, the principle of the balance of interests and the principle of States' freedom of action subject to certain limits along the lines of principle 21 of the Stockholm Declaration, according to which States had the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control did not cause damage to the environment of other States or areas.

42. As for the form which the end-product of the Commission's work should take, it had been proposed that two separate instruments with varying degrees of binding force should be elaborated, one dealing with liability and the other comprising a set of non-binding procedural rules. The question of the allocation of liability between a State and a private operator had also been extensively discussed. It should be clear from what he had said that the discussion had been of an exploratory nature, enlightened, however, by the considerable amount of reflection devoted to the topic in the past few years.

43. Turning to chapter VI of the report, dealing with the second part of the topic "Relations between States and international organizations", he said that in 1991 the Commission had held an in-depth discussion on the fifth and sixth reports of the Special Rapporteur, Ambassador Díaz-González. The fifth report had dealt with the question of the archives of international organizations and with the question of the publication and communications facilities accorded to international organizations. The sixth report contained a detailed study of the practice and problems in the area of fiscal immunities and exemptions from customs duties enjoyed by international organizations. Some members of the Commission had indicated that the topic had afforded the Commission an excellent opportunity to perform a classic codification exercise by organizing

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and systematizing existing norms and establishing clearly the essential minimum to which international organizations were entitled in that regard. Those members had further indicated that the Commission's task might also involve various aspects of progressive development in the regulation of relatively new areas of international relations, such as the use of satellite communications by international organizations or the highly sensitive questions that might be raised by the future extension of peace-keeping operations.

44. Emphasis had been placed on the need to safeguard the confidentiality of archives and ensure their inviolability, and on the obligation of States to refrain from any administrative or jurisdictional coercion in that area. On the question of publication and communications facilities, it had been stressed that international organizations needed to enjoy full freedom, subject to the proper application of the functional criterion. For example, although some organizations such as the United Nations needed to use all available means of communication, other organizations which were more limited in scope did not really need to use the whole range. Such distinctions were particularly important in the case of some means of communication such as radio and television stations.

45. Regarding fiscal immunities and exemptions from customs duties, it had been pointed out that the basic reason for the fiscal immunity of an organization lay in the principle that the host State should not derive unjustified benefit from the presence of an international organization on its territory. An additional reason put forward had been that the host State had to facilitate the accomplishment of the purposes of the organization. Exemptions from customs duties were based on the principle that organizations had to enjoy some independence in order to pursue their objectives and exercise their functions. In that connection, emphasis had been placed on the need to distinguish between official and other uses in order to determine the limits to which such exemptions should be subject.

46. Chapter VII, which was devoted to State responsibility, was confined to a summary of the presentation by the Special Rapporteur, Mr. Arangio-Ruiz, of his third report, devoted to the instrumental consequences of an internationally wrongful act or "countermeasures", namely, to the legal regime of the measures that an injured State could take against a State which had committed an internationally wrongful act and, notably, in principle, the measures applicable in the case of delicts. The relevance of the item had been vividly brought out by contemporary events on the international scene, and the Commission would certainly be enlightened in its task by current developments in the practice of States. The study of the topic of State responsibility would benefit greatly from the probable reduction in the workload with which the Commission had had to cope in the quinquennium that was coming to an end, in view of the considerable progress achieved on four of the items on the agenda. At the previous session of the General Assembly, some delegations had asked for the presentation by the Commission of a report on the state of the topic. On that point, reading from the introductory

statement made by Professor Arangio-Ruiz at the Commission's 2238th meeting, he noted that what remained to be done could surely be completed within the next five years.

47. In connection with chapter VIII, the last chapter of the report, entitled "Other decisions and conclusions of the Commission" he drew attention to three points.

48. The first point concerned the length of the Commission's session. The solution to a number of outstanding issues raised by the draft Code of Crimes against the Peace and Security of Mankind, as adopted in 1991 on first reading, hinged on the Commission's approach to the question of establishing an international criminal jurisdiction. It would be very difficult to finalize the Code in 1993 unless decisive progress was made in 1992 on that particular question. The Commission would therefore probably have to devote a considerable amount of time to the completion of the mandate given to it in that respect by paragraph 3 of General Assembly resolution 45/41. Much time would also be needed for the consideration of the third report of the Special Rapporteur on State responsibility which the Commission had been unable to discuss at its most recent session. The highly topical question of "International liability for injurious consequences arising out of acts not prohibited by international law" was also one on which the Commission's contribution was eagerly awaited by the international community. A number of draft articles were already pending in the Drafting Committee, but the working out of generally acceptable texts would be a very time-consuming task. The same remark applied to the topic "Relations between States and international organizations". Also, at the beginning of a new quinquennium, it was customary for the Commission to devote a significant amount of attention to the consideration of its methods of work. The Planning Group would therefore have to be allowed sufficient time for that at the next session.

49. His second point concerned the report which the General Assembly had requested the Commission to submit in relation to its decision to allow for two weeks of concentrated work in the Drafting Committee at the beginning of its most recent session. During those two weeks, the Drafting Committee had been able to complete its second reading of the topic "Jurisdictional immunities of States and their property" and the formulation of new articles of the draft Code of Crimes against the Peace and Security of Mankind.

50. The third point concerned the Commission's long-term programme of work. The Commission had drawn up a list of 12 topics from which it would select topics for inclusion in its long-term programme. It would welcome the guidance of members of the Sixth Committee in identifying those topics which might be considered as ripe for progressive development and codification. The Commission attached great importance to such guidance, which amounted to an expression of the wishes of the international community in connection with the codification and progressive development of a given topic.

(Mr. Koroma)

51. The Commission had continued its cooperation with other legal bodies such as the Asian-African Legal Consultative Committee, the Inter-American Juridical Committee and the European Committee on Legal Cooperation. The Commission deeply cherished those relationships, which enabled it to keep abreast of developments in those bodies, to their mutual benefit.

52. In that same spirit, a group of members of the Commission, as well as other scholars in international law, had participated in a Seminar on the draft Code of Crimes against the Peace and Security of Mankind and the establishment of an international criminal jurisdiction, organized by the Foundation for the Establishment of an International Criminal Court and the International Criminal Law Commission.

53. Some members of the Commission and other legal experts on disarmament had participated in the meetings of the Committee on Arms Control and Disarmament Law of the International Law Association, held in Geneva.

54. During the Commission's session, the twenty-seventh session of the International Law Seminar, had also taken place. In accordance with a decision adopted by the Commission at its forty-second session, the Seminar had been dedicated to the memory of Professor Paul Reuter. The Seminar was funded by voluntary contributions from Member States and through fellowships awarded by Governments to their own nationals. The Commission had noted with particular appreciation that the Governments of Austria, Denmark, Finland, Germany, Ireland, Morocco, Sweden, Switzerland and the United Kingdom had offered fellowships to participants from developing countries through voluntary contributions to the appropriate United Nations assistance programme. Thus, of the 596 participants, representing 146 nationalities, admitted to the Seminar since its inception in 1964, 308 fellowships had been awarded. The Commission continued to attach great importance to the Seminar, especially for young lawyers, as it enabled them to familiarize themselves with the work of the Commission, thereby promoting international law. However, as the available funds were almost exhausted, the Commission recommended that the General Assembly should again appeal to States which were in a position to do so to make the voluntary contributions needed in order to hold the Seminar in 1992 with the broadest possible participation.

55. In 1991, the Gilberto Amado Memorial Lecture had been given by Mr. Francisco Rezek, Minister for Foreign Affairs of Brazil, on the topic "International Law, Diplomacy and the United Nations at the End of the Twentieth Century". The lectures had been made possible through the generous contributions from the Government of Brazil, for which the Commission wished to express its gratitude.

56. The Commission was also grateful to the Government of Switzerland and the International Committee of the Red Cross for their hospitality and interest in its work.

(Mr. Koroma)

57. The Commission had always received considerable guidance and support in its relationship with the Sixth Committee. At all times, a symbiotic relationship had existed between the two. Perhaps that relationship was now more vital than ever before, in view of the renaissance of international law and the crucial role it was destined to play in international relations. The Commission, like the Sixth Committee, considered that its task was to facilitate the purpose and objectives of the United Nations. It was his hope that the productive relationship which had always existed between the Sixth Committee and the Commission would continue during the current session, with a view to reaching useful conclusions in that regard.

58. Mr. CALERO RODRIGUES (Brazil) said that consideration of the Commission's report topic by topic was a good working method, as it brought order and focus to the debate. None the less, it did not provide an opportunity for general comments and, therefore, an effort might be made to rectify that shortcoming in future.

59. The Commission had indeed accomplished a great deal of work. Although his delegation would have to look carefully at the draft articles on jurisdictional immunities of States and their property in order to give an opinion on the recommendation contained in the report that an international conference should be convened to examine the text in question and to conclude a convention on the subject, it felt that some very general comments about the draft articles on the law of international watercourses and the draft Code of Crimes against the Peace and Security of Mankind were in order. Moreover, the latter two sets of articles had been sent to Governments for their observations and comments, which meant that, for the time being, the most practical approach would be for delegations simply to urge their Governments to comply with the Commission's request.

60. Of the other three remaining topics on the Commission's agenda, State responsibility and international liability for injurious consequences of acts not prohibited by international law were of the utmost importance and deserved the full attention of both the Commission itself and the Sixth Committee. On the other hand, as his delegation had suggested four years earlier, consideration of the topic of relations between States and international organizations could be deferred and even removed from the agenda. The usefulness of a new convention on a subject that was apparently adequately covered by existing instruments was questionable.

61. As for new topics for future consideration by the Commission, the proposed list of 12 topics seemed only preliminary. At a time when the membership of the Commission was being renewed, representatives to the Sixth Committee might indicate their preferences for certain topics and their doubts or even objections regarding some of the topics, and they could suggest new ones.

(Mr. Calero Rodrigues, Brazil)

62. His delegation had doubts concerning several topics, in some cases because it was not convinced of the usefulness of codifying the subjects in question and in other cases because the complexity of the subjects indicated that the task would be impossible. In his delegation's view, only two of the topics proposed were important, and this could even be incorporated in the Commission's current agenda. The first topic concerned legal aspects of the protection of the environment of areas not subject to national jurisdiction ("global commons"), which would be an excellent complement to the current work on liability, and the second topic concerned the law of confined international groundwaters. In the Commission's draft, the articles on watercourses applied to groundwaters which constituted a unitary whole with surface waters, by virtue of their physical relationship, but did not cover groundwaters which did not bear such a relationship, in other words, confined groundwaters. The regulation of the rights and obligations of States regarding such waters when they crossed international borders would be very useful.

63. The jurisdictional immunities of States and their property was a domain of international law in which a chaotic situation prevailed. The traditional concept of absolute immunity had not resisted the assault of changing times, and States had extended their activities to fields which did not fall within the classic realm of State activity. However, no rules had been agreed for governing the new situation and each State acted independently. Some legislations even called into question the basic principle of par in parem imperium non habet, which was essential to orderly international life. For that reason alone, the necessity of arriving at an agreement which would harmonize positions and set the new rules that were to govern in new times must be recognized. After years of work under the leadership of two able and competent Special Rapporteurs, the Commission had made a tangible effort to reconcile different positions and reach a rational compromise. Perhaps the results were not entirely satisfactory and further adjustments were necessary, but such adjustments could be made only when Governments met at an international conference to exchange ideas and proposals.

64. His delegation therefore fully supported the Commission's recommendation that the General Assembly should convene an international conference of plenipotentiaries to examine the draft articles on the jurisdictional immunities of States and their property, in order to elaborate a convention on the subject.

65. Mr. MONTES DE OCA (Mexico) said that the activities carried out by the International Law Commission and described by its Chairman in introducing the report represented the conclusion of an important stage in the Commission's work. The codification and progressive development of international law could not take place in isolation from the current situation, which was characterized by profound changes and the steady disappearance of the previous ideological frames of reference. It was possible that the report of the Commission still reflected varying attitudes of States operating in a world in transition in which the concept of the State and its relationship with the

(Mr. Montes de Oca, Mexico)

individual was undergoing constant change. The reality of the late 1970s and the 1980s, when the Commission had taken up and developed the draft articles on the jurisdictional immunities of States and their property, was very different from the current reality. It had to be determined whether the draft articles, which reflected the reality of a particular decade, were falling behind the times. In that respect, the challenge continued to be to seek a balance between international cooperation, the responsibility of States and respect for their internal jurisdiction. Moreover, the trends towards economic integration and commercial freedom amongst States, which were relatively new, would influence the treatment of jurisdictional immunities of States and their property. With regard to the Commission's recommendation that an international convention on that subject should be drawn up at an international conference, his delegation would prefer the option of establishing a working group of the Committee to consider the articles submitted by the Commission.

66. Mrs. SZAFARZ (Poland) said that although the draft articles on jurisdictional immunities of States and their property embodied the concept of a rather limited immunity of the State, in contrast with the concept of absolute immunity, they still did not seem to go far enough in that direction. The draft articles were a compromise solution, but not all compromises were felicitous; their adequacy depended largely on the durability of the principal interests involved and, in relation to the subject under consideration, there had been considerable changes recently in Central and Eastern Europe. With regard to Poland, the philosophy of the omnipotence of the State was now and forever part of history and had been replaced by a philosophy of a person-oriented State. In the economic sphere, Poland was moving rapidly towards a market economy and the privatization of State enterprises was under way. That being so, it was in Poland's interest to promote the justified interests of natural and juridical persons even at the expense of the State. Her delegation believed that the trend to limit the immunity of the State, which dated back to the 1950s, was by no means accidental and that it would sooner or later encompass more and more countries. The draft articles on the jurisdictional immunities of States and their property should therefore be amended at a diplomatic conference which should be convened in the near future.

67. As to the draft articles under consideration, her delegation was inclined to give serious consideration to the arguments in favour of omitting the reference to the purpose of the transaction when evaluating its commercial or non-commercial character (art. 2, para. 2). Perhaps the expression "agencies or instrumentalities of the State" in article 2, paragraph 1 (iv) could be made more precise so as to exclude entities which were separate juridical persons capable of suing or being sued. In the case of article 12 on personal injuries and damage to property, it might be worth adopting the solution of the European Convention on State Immunity (art. 11). That article should also cover, in a more precise manner, acts committed by representatives of States in their private capacity. Her delegation saw some merit in the proposal to

(Mrs. Szafarz, Poland)

supplement article 17 on the effect of an arbitration agreement by adding a special clause on the recognition of the award in disputes concerning an arbitration agreement in respect of which the State could not invoke immunity.

68. In general, her delegation hoped that, if carefully drafted, the future convention on jurisdictional immunities of States and their property would facilitate and accelerate radical change in the economic and legal aspects of international relations.

69. The draft conventions elaborated by the Commission had, as a rule, been of very high quality and could be commended. As to the future, her delegation believed that the Commission should first continue its current unfinished topics and, if possible, try to finalize them before the end of the United Nations Decade of International Law. That applied, in particular, to the Draft Code of Crimes against the Peace and Security of Mankind and to the topic of State responsibility. Her delegation also considered that the Commission was the most appropriate forum to elaborate a draft statute for an international criminal court.

70. With regard to the Commission's proposals for its long-term programme of work, her delegation felt that the topic "International legal regulation of foreign indebtedness" was very important but did not seem sufficiently mature for codification.

71. The second topic "The legal conditions of capital investment and agreements pertaining thereto", should be dealt with within the framework of UNCITRAL.

72. The third topic "Legal aspects of the protection of the environment of areas not subject to a national jurisdiction (global commons)", was both interesting and important and deserved particular attention because the protection of the environment of areas not subject to a national jurisdiction would also result in the protection of the environment of the territory of States. Her delegation was therefore in favour of including that topic in the Commission's agenda.

73. As to the fourth topic "The law of confined international groundwaters", her delegation agreed with the Commission that the time had come to elaborate generally acceptable rules of international law on that topic, but believed that the problem of groundwaters should be regulated together with the problem of international watercourses under the general heading "land waters". Land waters should be treated as one complex system, the way they existed in reality.

74. Although the legal effects of United Nations resolutions was a particularly attractive topic for any international lawyer, her delegation doubted whether the Commission was an appropriate forum to deal with it.

(Mrs. Szafarz, Poland)

According to the law of international organizations it was for the principal organs of the organizations themselves to make authoritative interpretations of their statutes, including provisions regulating the adoption of resolutions, their legal force, etc. That being so, the General Assembly and the Security Council should themselves decide on those issues. Her delegation supported the inclusion of the topic of extraterritorial application of national legislation in the Commission's agenda since it was of interest to all States and was appropriate for codification.

75. For the time being, the topic "Extradition and judicial assistance" should be limited to the domain of bilateral and regional treaties; there was no urgent need to regulate that problem on a universal basis.

76. The topic "International commissions of inquiry (fact-finding)" was also pertinent for the Commission and, in the view of her delegation, the Sixth Committee itself should start the negotiation process in that respect.

77. The topic "The law concerning international migrations" was of growing importance; current international law in that respect should be supplemented and the whole subject might have to be regulated anew. Her delegation therefore strongly supported its inclusion in the Commission's agenda.

78. The topic "Rights of national minorities" was also of growing significance but, since it was part of the problem of human rights, the Commission on Human Rights was best suited to deal with it.

79. The United Nations Decade of International Law put a lot of responsibility on the International Law Commission. Both the quantity and quality of its future draft conventions should be particularly impressive and her delegation was convinced that the Commission would live up to the expectations of the international community.

80. Mr. YOUSIF (Sudan), after noting that he had closely followed the introduction of the Commission's report on the work of its forty-third session, expressed support for the Commission's future work. His delegation, which was greatly interested in the matters to be discussed in the Committee, might speak on other agenda items.

The meeting rose at 12.30 p.m.

UNITED NATIONS

General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
23rd meeting
held on
Tuesday, 29 October 1991
at 10 a.m.
New York

SUMMARY RECORD OF THE 23rd MEETING

Chairman: Mr. AFONSO (Mozambique)

later: Mr. TETU (Canada)

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91-56899 5156S (E)

Distr. GENERAL
A/C.6/46/SR.23
13 November 1991
ENGLISH
ORIGINAL: SPANISH

The meeting was called to order at 10.05 a.m.

AGENDA ITEM 128: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION (continued) (A/46/10 and A/46/405)

1. Mr. CRAWFORD (Australia) said that since being proposed on first reading by the International Law Commission the draft articles on jurisdictional immunities of States and their property had undergone many specific changes, almost all of them for the better. For example, there was the inclusion of the component units of a federal State in the definition of "State" in article 2, paragraph 1, the preference for the term "commercial transactions" over "commercial contracts", and many other verbal clarifications. The only regrettable change was the deletion of the former draft article 16 dealing with fiscal matters.

2. His delegation intended to refer only to issues of principle which might influence the subsequent handling of the topic by the Committee. It welcomed the addition of paragraph 3 in draft article 10, which made the basic point that the immunity of a State itself was not abrogated because a separate State corporation entered into a commercial transaction. The inclusion of a provision of that kind was important because misunderstanding on the point might prejudice the acceptance of the draft articles as a whole. Article 10, paragraph 3, was without prejudice to the question of any independent liability of a State in cases where it acted in relation to the transactions of separate State corporations or entities, for example the liability of a State as a guarantor in relation to a commercial transaction of a separate entity. The paragraph stated a principle generally applicable in the area of State immunity which was not limited to the topic of commercial transactions.

3. With regard to immunity from measures of constraint articles 18 and 19 represented a step in the right direction, but it was not certain that they were detailed enough to cope with the various procedural and substantive problems which could arise. The draft articles dealt simultaneously with the issue of interim or pre-judgement enforcement and with the issue of final enforcement. Although the jurisdictional principles applicable to interim and final enforcement might be the same, the context was not the same. In particular, States could have a legitimate concern that their property might be the subject of pre-judgement attachment in cases where both the jurisdiction of the local court and the merits of the case itself were contested.

4. That led to the related point that, prior to judgement, there must be some presumption that a State property subject to local jurisdiction would comply with the judgement of the court. On the other hand, once judgement on the merits had been given, a State's immunity from execution must not be so extensive as to be virtually complete. The requirement of a connection between the property and the claim, contained in article 18, paragraph 1 (c), was very vague.

(Mr. Crawford, Australia)

5. His delegation believed that more thought needed to be given to the problem of execution, in order to ensure that measures of execution, and especially pre-judgement execution, were taken only when really necessary.

6. It agreed with the delegations of Mexico and Poland that the draft articles should be given further consideration, for example by a working group of the Committee at its next session, before the matter was referred to a diplomatic conference. That would enhance the possibilities of a successful outcome, with respect not only to the adoption of a convention but also to its acceptance by the States before whose courts the issues arose most often. The draft articles formed a solid basis for the work both of the Committee and, it was to be hoped, of a future diplomatic conference.

7. Mr. SCHARIOTH (Germany) said that the draft articles on jurisdictional immunities of States and their property prepared by the Commission constituted a suitable basis for the drafting of an international convention to be approved by a diplomatic conference. The discussion had centred on the question of whether the "purpose" or the "nature" of a transaction was the decisive factor in determining its "commercial" character. His delegation had always been in favour of the criterion of the nature of the contract. The wording of article 2, paragraph 2, made it plain that both in general and in principle the legal nature of a contract should be the only determinant of its commercial character. However, the Commission had retained the idea that purpose might be taken into account as a supplementary criterion. In the light of paragraph 26 of the commentary contained in the Commission's report (A/46/10), the addition of that criterion might indeed offer a suitable basis for a generally acceptable compromise to be found at the diplomatic conference. The final text of paragraph 2 might allow that the competent court, not the defendant State, might be free in certain cases to take governmental purpose into account as well, provided that it was the practice of the defendant State to conclude such contracts for public ends.

8. A useful clarification had been added to article 6 by requiring courts to determine ex officio the question of respect for the immunity of another State. The Commission had finally found a neutral title for part III, the old version of which had given rise to much controversy. The general rule on immunity was found in article 5, which asserted immunity except in cases where States were subject to the provisions listed in part III, when immunity was not available.

9. With regard to the immunity of States operating an independent enterprise, the topic dealt with in article 10, paragraph 3, the Commission had unfortunately not accepted the proposal made by Germany in 1990. In accordance with the present text, a State setting up such entities without providing sufficient capital could secretly free itself from any risk. His delegation suggested once again that, as a minimum prerequisite for granting immunity, there must be transparency with regard to the capital resources of the State enterprise.

(Mr. Scharioth, Germany)

10. His delegation welcomed the fact that the Commission had followed the Special Rapporteur's recommendation with regard to article 16, which dealt with ships operated by a State. With the present wording the sole criterion for the granting of immunity was the non-commercial purpose of the operation at the time when the cause of action arose.

11. The rule laid down in article 22, paragraph 2, that a State should be exempt from providing any security, even when acting as plaintiff, accorded an unwarranted privilege to States and was therefore not acceptable. The plaintiff State could institute proceedings without risk, whereas the defendant might face a considerable loss even when successful. Therefore, his delegation strongly supported the original proposal submitted by the Special Rapporteur that paragraph 2 should be amended in such a way that at least the plaintiff State should be required to provide a security or bond.

12. His delegation would have liked the Commission to address as well the intricate problem of a clause on settlement of disputes. The question of how to settle a dispute about the interpretation of the text was of crucial importance.

13. Mr. Têtu (Canada) took the Chair.

14. Mr. MIKULKA (Czechoslovakia) said that at its forty-third session, the International Law Commission had completed in second reading the draft articles on jurisdictional immunities of States and their property. He wished to make a number of comments on the articles examined by the Drafting Committee and, later, by the Commission.

15. The content of article 10, paragraph 3, which accounted for the main bulk of commercial transactions engaged in under the auspices of States, had not given rise to insuperable differences of opinion. Some members had attributed to States the commercial transactions engaged in by a State enterprise or other similar entity, arguing that in such cases the State did not enjoy jurisdictional immunity; others had proceeded from the premise that State enterprises, once they had a legal personality distinct from that of the State, were acting on their own behalf. That had always been the position of his delegation, which, in describing Czechoslovak practice in that area, had consistently stressed the independent legal personality of Czechoslovak State enterprises, clearly indicating that Czechoslovakia had never invoked the immunity of its State enterprises before the courts of other States.

16. His delegation therefore supported the provision contained in article 10, paragraph 3, according to which the immunity enjoyed by a State was not to be affected with regard to a proceeding which related to a commercial transaction engaged in by a State enterprise or other similar entity which had an independent legal personality and was capable of acquiring, owning or possessing and disposing of property.

(Mr. Mikulka, Czechoslovakia)

17. The content of the above-mentioned provision could be deduced from the reasoning of the provisions of article 2, paragraph 1 (b) (iv). In fact, the provisions of that clause and of article 10, paragraph 3, complemented one another. Under article 2, paragraph 1 (b) (iv), the agencies or instrumentalities of the State and other entities would be included in the scope of the definition of the term "State" to the extent that they were entitled to perform acts in the exercise of the sovereign authority of the State. The distinguishing factor was one of function, to the exclusion of any other element, including the existence of an independent legal personality.

18. Joint reading of article 10, paragraph 3, and article 2, paragraph 1 (b) (iv), raised the question of how to treat commercial transactions engaged in by entities established by the State when they did not have an independent legal personality. In the view of his delegation, the only possible interpretation was that if the entity did not have an independent legal personality, the commercial transaction entered into by it must be regarded as if it were the commercial transaction of a State that was subject to the provisions of article 10, paragraph 1.

19. His delegation could support the text of article 11, although it acknowledged the logic of the argument made against paragraph 2 (c), whose purpose was to preserve the immunity of the State in the event of a proceeding which related to a contract of employment when the employee had been neither a national nor a habitual resident of the State of the forum at the time when the contract of employment had been concluded. His delegation associated itself with the opinion of the majority of States on that question.

20. Article 12 on personal injuries and damage to property required in-depth analysis. The exception to the general rule of State immunity provided for in that article was limited to cases of death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which was alleged to be attributable to the other State, if the act or omission had occurred in the territory of the State of the forum and if the author of the act or omission had been present in that territory at the time of the act or omission. That was the only realistic approach that had a chance of being approved by the majority of States.

21. His delegation had reservations about another aspect of the problem of injury to persons and damage to property, namely, the absence of a distinction between damage caused by acts jure gestionis and acts jure imperii. Although in its commentary to article 12, the Commission recognized that in the case law of some States involving motor accidents, immunity had been maintained for acts jure imperii but not for acts jure gestionis, it did not give any explanation as to why it had departed from that norm, which had been confirmed by the practice of States.

22. Article 13 on ownership, possession and use of property was one of the provisions of the draft that had been confirmed by the constant, uniform practice of the great majority of States.

(Mr. Mikulka, Czechoslovakia)

23. With regard to the immovable property of a diplomatic mission, article 31, paragraph 1 (a), of the 1961 Vienna Convention on Diplomatic Relations established that a diplomatic agent was to enjoy immunity for a real action relating to private immovable property situated in the territory of the receiving State when he held it on behalf of the sending State for the purposes of the mission. The immunities enjoyed by persons attached to missions were regarded in the final analysis as State immunities, because they belonged to the State. Such immunity for a real action was therefore covered by the provisions of article 3 of the draft. Furthermore, the Vienna Convention contained no provision explicitly relating to immunity for a real action aimed directly at the sending State if it owned the said property itself. For the drafters of the Vienna Convention, that case could have exceeded the scope of diplomatic law and of the Convention, but the draft must not disregard that problem and should instead contain an unequivocal provision in that regard.

24. His delegation approved the new title of part III, which was neutral and overcame another conflict between the various doctrinal approaches.

25. State immunity from measures of constraint, to which article 18, one of the fundamental provisions of the draft referred, could not be absolute either. Among the exceptions limiting its scope, the one contained in paragraph 1 (c), which was based on a connection between the property and the object of the proceeding or the agency against which the proceeding had been directed, deserved special attention.

26. The enumeration in article 19 of specific categories of property that could not be the subject of measures of constraint was another element of balance in the draft.

27. With regard to part V of the draft, comprising miscellaneous provisions, his delegation agreed with the idea expressed in the Commission that exceptions to the obligation set forth in article 22, paragraph 2, to provide security should be limited to situations in which the State was in the position of plaintiff.

28. The definition of the "State", which included different elements, some of which could be endowed with their own legal personality and enjoy economic autonomy under domestic law, led to the problem raised by the term "State property". As in the draft articles on State succession in respect of property, archives and State debt, the Commission was not proposing a definition of the term, but unlike in those articles, neither did it leave the matter to the domestic law of the State. While it was domestic law which first determined the status of State property, some international instruments had included provisions which defined that category more clearly, in particular the often cited General Assembly resolution 388/V/1950 on economic and financial provisions relative to Libya and resolution 530/VI/1952 on Eritrea. However, international customary law had not established an

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autonomous criterion for determining what constituted State property. The problem was aggravated by the complexity of defining the term "State", since the various political subdivisions, agencies and instrumentalities included in the term by virtue of article 2, paragraph 1 (b), could have at their disposal property which fell into the category of public property rather than State property as such. The problem was further complicated in relation to agencies, instrumentalities and units which were considered as the State only in so far as they acted in exercise of the prerogatives of its governmental authority. He wondered to what extent their property was considered State property.

29. That question among others should be carefully studied by Governments in order to arrive at a satisfactory solution at the diplomatic conference which his delegation was in favour of convening.

30. Mr. PUISSOCHET (France) said that the codification of the rules of international law on jurisdictional immunities of States and their property was of great theoretical and practical use. His country had always encouraged that effort and was pleased that the work of the International Law Commission on that item had been successfully completed.

31. The proposed text was, on the whole, satisfactory as far as its principles were concerned, although some problems remained which could be explained by the complexity of the subject and the diversity of approaches to it according to legal systems. There was no doubt, however, that on the basis of the Commission's work, solutions acceptable to all States could be found which would represent significant progress in international law.

32. Without undertaking an exhaustive analysis of the draft, he wished to review some of its major aspects. With regard to article 2, the accepted wording, while more satisfactory, was not fully convincing. In paragraph 1, he had doubts about the appropriateness of considering as a State the "constituent units of a federal State", given the wide variety of situations covered by that formula and the uncertainties to which it could give rise. With regard to paragraph 2, while an effort had been made to arrive at an appropriate treatment of contracts which, although involving commercial transactions, had specifically State-related purposes such as national defence and therefore should enjoy immunity, he doubted whether the wording adopted, which stated that the purpose should be "relevant in determining the non-commercial character of the contract", covered that situation clearly.

33. He also wondered whether a rule as general as that contained in article 6, whereby a State "shall ensure that its courts determine on their own initiative that the immunity of that other State is respected", could be adopted, given the evident complexity and sensitivity of the evaluation of jurisdictional immunity.

(Mr. Puissochet, France)

34. The drafting of article 11 took more fully into consideration the concerns expressed by France on several occasions and better preserved the balance between the protection of employees from other States, respect for the social legislation of the forum State and the free exercise of the governmental authority of the other State. On the whole, therefore, the text was acceptable. He was pleased that the Commission had adopted on second reading paragraph 2, subparagraph (a), which recognized State immunity if "the employee has been recruited to perform functions closely related to the exercise of governmental authority", an unambiguous formulation. He also welcomed subparagraph (b), which took into account the practical reality in which it would be unacceptable for a court to impose upon a State the recruitment, renewal of employment or reinstatement of an individual which that State did not wish to have among its employees.

35. Article 16, on the complex issue of rules governing ships owned or operated by a State, had been amended. Paragraph 1 retained the wording "the ship was used for other than government non-commercial purposes", which had the advantage of reproducing the terms of the United Nations Convention on the Law of the Sea (art. 96). It was commendable that paragraph 1 also referred strictly to the "use" of ships and no longer made reference, as before, to their intended use, since it was appropriate to be concerned only with the criterion of actual use of the ship, which was far less controversial than intended use.

36. Despite the progress he had described, he still believed, however, that the comments and proposals he had made at the previous session remained valid. Coherence with the various instruments which served as a reference for the law of the sea should be maintained. Those instruments included the Geneva International Regime of Maritime Ports of 9 December 1923, the Brussels International Convention for the Unification of Certain Rules relating to the Immunity of State-owned Vessels, of 10 April 1926, and the Montego Bay Convention on the Law of the Sea of 10 December 1982, already cited. Those conventions offered a positive definition of the ships of a State which could enjoy jurisdictional immunity, by contrast with draft article 16, which offered a negative definition. In his opinion, it was preferable to start from the definition given in article 96 of the Convention of 1982 previously cited, and to include the provisions relating to such immunity not in the part on exceptions to State immunity, but in that on general principles. He also thought that the suggestions mentioned in the report of the International Law Commission (A/46/10) to include provisions on aircraft and space objects were very interesting and deserved further study.

37. Turning to part IV of the draft, his country had always been reluctant to deal with immunity from enforcement in a text on jurisdictional immunities, although it was not radically opposed to doing so. Great care would continue to be needed, because of the problems created by the diversity of legal systems. As the Commission said in its report, "it would be difficult, if not impossible to find a term which covers each and every possible method or

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measure of constraint in all legal systems". It was necessary, however, to ensure that everyone assigned the same meaning to the adopted text.

38. Article 19 listed State property which "in particular", "shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes". The words "in particular" no doubt indicated that the listing was not exhaustive, which was a step forward.

39. While France still had some concerns about the draft, it felt it was an important new step in international law. France would give favourable consideration to the convening of an international conference of plenipotentiaries to negotiate a convention on that subject.

40. Mr. HAYES (Ireland) said that the ambitious targets which the Commission had set itself at the beginning of the five-year term had been met. The draft articles on all the topics demonstrated the care invested in their preparation, and the commentaries were up to the standard expected from the Commission.

41. State immunity was a classical subject of international law, important for both doctrinal and practical reasons, for it was concerned with the interplay of two aspects of sovereignty - State personality and State jurisdiction. The rules applied when a State engaged in activities in the territory of another State, and that overlapping of the exercise of sovereign functions by different States was obviously a potential source of conflict.

42. Both the codification and the progressive development of international law on the topic had had to be built more on State practice than on international legislation. Although some multilateral provisions did exist, mainly in the European Convention on State Immunity, which was a regional instrument, and almost incidentally in the 1926 Brussels Convention, the main sources were national legislation and judicial decisions and bilateral agreements. The Commission's work had been to extract selectively from that material, including recent developments in the field. The draft articles represented a treatment of the topic which afforded the international community an opportunity to adopt rules that would be generally recognized.

43. The main difficulty encountered by the Commission in its deliberations on the topic was the wide gap between two schools of thought, both of them represented in the Commission and outside it, which favoured respectively an absolute and a restrictive approach to immunity, with the second approach based on a distinction between acta jure imperii and acta jure gestionis. Absolute immunity was the older and what might even be called the traditional approach. However, his Government favoured the restrictive approach as being more appropriate in modern circumstances. It was nevertheless clear that generally acceptable rules could not be devised by accepting totally the views of one school. Changes in the geopolitical situation in recent years had made

(Mr. Hayes, Ireland)

possible a compromise which represented an erosion of the absolute theory in favour of a qualified version of the restrictive theory, devoid of vagueness or extremism.

44. The present draft articles identified clearly situations in which immunity did not apply, with the corollary that it applied absolutely in other cases. Those practical provisions had been reinforced and further clarified by including in article 2 a precisely drafted and detailed definition of a commercial transaction and by dealing in substantive articles with other significant factors such as the role of State enterprises and the uses of ships. It could be said that the actual approach taken in the articles to the applicability to immunity was functional, and it should enhance their appeal to all Governments.

45. Commenting on some of the amendments to the draft articles, he said that the amalgamation of the earlier articles 2 and 3 into a single article 2 on use of terms was sensible and an improvement. The inclusion of two new elements, i.e. the constituent elements of a federal State and other entities, in the definition of a State contained in article 2, paragraph 1 (b), was also justified.

46. His delegation welcomed the deletion from article 5, which stated the basic principle of immunity, of the reference to the relevant rules of general international law included in square brackets in the version approved on first reading.

47. It also welcomed the adoption of a neutral title for part III reflecting the pragmatic and functional approach taken by the draft articles in that part, in particular in the new paragraph 3 in article 10.

48. Those favourable comments did not mean that his Government thought that the articles were without fault. However, it did believe that as a whole their thrust was in the right direction and that viable solutions to the most difficult problems had emerged. It therefore supported the Commission's recommendation that an international conference should be convened in order to elaborate a convention on the topic. But it did not support the proposal of some delegations that prior to the conference the draft articles should be considered by a working group of the Committee, for that would merely delay the adoption and entry into force of rules which would constitute a valuable addition to international law.

49. Mr. ASTAPENKO (Belarus) said that the Commission's report on the work of its latest session constituted a solid basis for detailed, constructive and fruitful discussion in the Committee of the urgent juridical needs of the world community.

50. The positive changes on the political atmosphere had had a favourable impact on the Commission's work, and there was no doubt that the mutually acceptable resolution of the complex legal questions considered by the

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Commission would enhance the role of international law and establish its primacy in the solution of the practical problems of relations between States, as well as helping to achieve the goals of the United Nations Decade of International Law.

51. The Supreme Soviet of the Republic of Belarus had adopted a Declaration on Principles of Foreign Policy in which it confirmed the country's commitment to the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, as well as its undertaking to fulfil all the obligations under international law arising out of the international treaties to which it was a party.

52. His delegation had followed with keen interest the Commission's work on the topic of jurisdictional immunities of States and their property and was happy to note that the Commission had taken into account many of the proposals made by Belarus at various times. The Commission had succeeded in drafting a balanced and quite detailed document, on the basis of which suitable solutions could be found to the complex and thorny problems which arose in that area of State relations.

53. The draft articles approved by the Commission were based on the concept of the absolute immunity of a State as expressed in the universally recognized principle par in parem imperium non habet, which had been embodied in article 5. His delegation supported those members of the Commission who had been in favour of deleting from that article the reference to the relevant rules of general international law, because that had made it possible to define accurately the scope of application of the whole set of draft articles and had considerably increased its attractiveness for the further codification of international law.

54. The draft articles contained a very satisfactory definition of a State, which included the constituent elements of a federal State conducting their external trade relations independently; they established the requirements for taking into account the specific features of the activity of different States when determining whether a contract or transaction was of a commercial nature; they reflected the principle that State immunity was not only a right but also an obligation; and they analysed in detail the consequences of the express consent of a State to exercise jurisdiction and of its participation in proceedings before a court.

55. Part III of the draft articles, concerning proceedings in which State immunity could not be invoked, was of great practical importance, especially the provision which stated that the immunity from jurisdiction enjoyed by a State should not be affected with regard to a proceeding which related to a commercial transaction engaged in by a State enterprise which had an independent legal personality. That solution would be very important for the development of stable economic relations between States and between their various enterprises.

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56. His delegation also agreed with other exceptions to immunity of jurisdiction, particularly the one contained in article 16, which resolved on a residual basis the problems connected with exceptions in respect of ships owned or operated by a State.

57. His delegation attached fundamental importance to the formulation of the principle of the inadmissibility of measures of constraint in respect of a State. The limitation of immunity provided by article 18 could be accepted if it was borne in mind that the provision also established precisely and unambiguously the general rule that the authorities of one State could not take measures of constraint against another State and confirmed that such immunity from execution was totally independent of the jurisdictional immunity of States. In that connection his delegation supported the Commission's decision to provide some protection for special categories of property, including in particular the property of the central bank or other monetary authority of the State. That seemed to be the only correct approach, because central banks were instruments of the sovereign power of States and therefore any activity exercised by them fell under the immunity from execution of court decisions.

58. On the basis of the foregoing comments his delegation could draw the preliminary conclusion that the draft articles proposed by the Commission were a good basis for the further codification of international law and for the adoption by States of a final decision on the topic. It therefore supported the Commission's recommendation that an international conference should be convened to examine the draft articles and conclude a convention on the topic.

59. Mr. YAMADA (Japan) said that the international community was undergoing a profound transition from confrontation to cooperation and that the Gulf crisis had clearly shown that universal acceptance and respect for the rules of international law regulating the basic relations between States constituted an essential foundation for building a new peaceful and stable international order. Accordingly, the mission which had to be carried out for the sake of the next generation was to promote the progressive development of international law.

60. Furthermore, the increase in international trade and in technological developments was creating new needs and concerns which had to be addressed effectively so as to promote the rule of law in the international community.

61. In the past the Commission had played an important role in the codification of international law by formulating a number of conventions which formed the core of contemporary international law. However, from now on the Commission would give particular attention to the progressive development of international law, i.e. one of its most important tasks would be to determine how it might respond to the changing needs of the rapidly evolving international community. The Commission's usefulness in the future would depend on the extent to which it managed to perform that task successfully.

(Mr. Yamada, Japan)

62. The proper approach to the progressive development of international law should be problem-oriented rather than ideological, so that the final output reflected the actual world situation. His delegation expected that the Commission would respond appropriately to the new needs and concerns of the international community and would continue its efforts to establish an international legal order which would serve the cause of world peace and prosperity. The Commission's programme of work in the future should be designed to expedite its deliberations on the remaining topics. In view of the strong demand for the establishment of legal rules regulating international liability for injurious consequences arising out of acts not prohibited by international law, everything possible should be done to produce a document capable of winning broad acceptance.

63. With regard to the selection of new topics for inclusion in the Commission's long-term programme of work, great care should be taken in determining whether a topic was of concrete concern to the international community and whether there was a reasonable prospect of achieving practical and generally acceptable results without any excessively theoretical discussions.

64. The question of the jurisdictional immunities of States and their property was of keen interest to his delegation, which thought that internationally uniform rules should be adopted on the topic as soon as possible. The practice of States in the matter indicated that, while some continued to subscribe to the theory of absolute immunity, others thought that absolute or unlimited immunity should not be granted to a State when it engaged increasingly in commercial activities in various fields. Consequently it would be difficult to claim that the international community held a unified position on the issue.

65. The text of the Commission's draft articles on the topic contained two types of provision. The first confirmed the position that in principle States enjoyed immunity, while the second elaborated in concrete terms the scope and extent of the limits on State immunities.

66. Turning to the key elements of the draft articles he said that a two-step criterion was used to determine whether a transaction was of a commercial nature. The first step tested the nature of the transaction and the second tested its purpose. The aim was to ensure the appropriate application of immunity from jurisdiction to acts of developing States whose purpose was to promote the development of their country's economy. One of the key factors in the examination of the draft articles was the way in which article 2, paragraph 2, was evaluated, for the provision was based on the most important elements which were common to all States despite their different positions.

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67. The text of the draft articles took into account the position of the countries concerned with respect to the question of State enterprises. For example, article 10, paragraph 3, established clearly that a State enterprise which engaged in a commerical transaction was an entity independent of the State and subject to the same rules and liabilities as were applicable to a natural or juridical person. And article 2, paragraph 1 (b) (iv), allowed that there were some cases in which private enterprises, even though not governmental organizations, could perform acts in the exercise of the sovereign authority of the State as agencies or instrumentalities of the State.

68. With regard to State immunity from measures of constraint, it must be borne in mind that there had previously been a tendency to consider that issue separately from the issue of immunity from jurisdiction, so that the two topics had developed independently. Since there was a division of views even among those States which subscribed to the theory of restrictive immunity, careful consideration must be given to the question of whether the provision was really acceptable to all States.

69. The practice of States with regard to jurisdictional immunities was not uniform, for every State had dealt with the issue differently by establishing its own laws or by basing its judgements on legal precedents. That situation underscored the need to codify the legal rules on the topic and demonstrated how difficult it was to produce a text acceptable to all. Consequently, in considering the appropriateness of convening an international conference of plenipotentiaries it was necessary first of all to ascertain the views of every State on the need to consolidate the international legal rules and at the same time to study the possibility of drawing up a convention allowing all countries to agree on a text which reflected both the practice of the States subscribing to the principle of absolute immunity and the practice of the States supporting restrictive immunity.

70. Mr. Afonso (Mozambique) resumed the Chair.

71. Mr. JAKOVIDES (Cyprus) said that the Commission had achieved the goals which it had set for itself at the beginning of its term of office: it had concluded its consideration of the topic "Jurisdictional immunities of States and their property" by adopting the final version of a set of draft articles; it had provisionally adopted two sets of draft articles on two other topics in its programme of work, i.e. the draft Code of Crimes against the Peace and Security of Mankind, and the law of the non-navigational uses of international watercourses. Furthermore, at its forty-first session the Commission had approved the final version of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by a diplomatic courier and of the draft optional protocols thereto. In addition to those achievements the Commission had made considerable progress on the topics of international liability for injurious consequences arising out of acts not prohibited by international law, relations between States and international

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organizations, and State responsibility. The Commission's programme of work had been made less burdensome by those achievements and advances. It was therefore to be hoped that it would conclude as early as possible the draft articles on the important topic of State responsibility.

72. The role of the Sixth Committee was to make general comments on the Commission's report and to give it guidance on legal and political matters. That was the Committee's best contribution to the attainment of the objective of the codification and progressive development of international law.

73. With respect to chapter II of the report, his delegation noted with satisfaction the adoption on second reading of the draft articles on jurisdictional immunities of States and their property. From the beginning, Cyprus had maintained that a pragmatic approach should be adopted and that doctrinal differences between the absolute and restrictive immunity theories should be avoided. That had, by and large, been achieved on the basis of State practice. His delegation supported the Commission's recommendation on the convening of an international conference of plenipoteniaries to examine the draft articles and to conclude a convention on the subject, without ruling out the possibility of the matter being considered by a working group. His delegation hoped that the international conference would establish a legal mechanism for the settlement of disputes.

74. With reference to chapter III, his delegation welcomed the adoption on first reading of the draft articles on the law of the non-navigational uses of international watercourses. In that regard, it should be noted that Member States would be requested to submit their comments and observations on the draft articles by 1 January 1993. Referring to paragraph 35 of the report, his delegation expressed the hope that it would be possible to include a provision on the peaceful settlement of disputes during the subsequent consideration of the topic.

75. With respect to chapter IV, his delegation believed that the adoption of the draft Code of Crimes against the Peace and Security of Mankind, whose essential elements were crimes, penalties and jurisdiction, would discourage those seeking to commit such crimes and punish those who violated the provisions of the Code. While the Code should be comprehensive, its provisions should be precise and should encompass legally definable crimes in order to ensure the widest possible acceptability and effectiveness.

76. The adoption on first reading of those draft articles marked a major step towards the progressive development of international law and constituted a highlight of the United Nations Decade of International Law. Once Governments had submitted their comments and observations on the draft articles, the Commission would have to re-examine some aspects of the text. It would also be necessary to carry out additional work regarding the creation of international criminal jurisdiction. His delegation had taken note of the work carried out by the Special Rapporteur and the Commission, as well as the

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impetus that the subject had received in other forums, such as the seminar held at Talloires, France, in May 1991. A number of distinguished personalities, such as the Vice-Chancellor and Minister for Foreign Affairs of Germany, Mr. Hans-Dietrich Genscher, had also advocated the establishment of an international criminal court with jurisdiction in such cases as crimes against humanity, peace and the environment, genocide and war crimes. The Prime Minister of Trinidad and Tobago, Mr. Robinson, had proposed the establishment of an international criminal court with jurisdiction in the area of drug trafficking. In the light of those developments, his delegation was convinced that the time had come for the General Assembly to give a clear directive to that effect so that the Commission could proceed with an unambiguous mandate.

77. With regard to draft article 5 of the draft Code of Crimes against the Peace and Security of Mankind, it was important to bear in mind that the "prosecution of an individual for a crime against the peace and security of mankind does not relieve a State of any responsibility under international law for an act or omission attributable to it". As pointed out in the commentary to draft article 5, even though "the Commission decided, at least at this stage, not to apply international criminal responsibility to States", the draft article "leaves intact the international responsibility of the State".

78. Transfers of population under draft article 21 meant transfers "intended, for instance, to alter a territory's demographic composition for political, racial, religious or other reasons, or transfers made in an attempt to uproot a people from their ancestral lands".

79. Moreover, the commentary to draft article 22 noted that "it is a crime to establish settlers in an occupied territory and to change the demographic composition of an occupied territory ... Establishing settlers in an occupied territory constitutes a particularly serious misuse of power, especially since such an act could involve the disguised intent to annex the occupied territory. Changes to the demographic composition of an occupied territory seemed to the Commission to be such a serious act that it could echo the seriousness of genocide".

80. With regard to chapter V, it should be recalled that the Special Rapporteur had invited the members of the Commission to consider the following issues under the topic "International liability for injurious consequences arising out of acts not prohibited by international law": the title of the topic, nature of the instrument, scope of the topic, principles relevant to the topic, prevention of transboundary harm, liability for transboundary harm and the issue of harm to the "global commons". The consideration of the nature of the instrument could be postponed until coherent, reasonable, practical and politically acceptable draft articles had been developed. With regard to the title of the topic, the word "acts" should be replaced by the word "activities", since that would be more in keeping with the scope of the item, which should refer both to activities involving risk and to activities

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with harmful effects. With respect to the procedural obligations regarding prevention, the obligation of due diligence should be a fundamental obligation and, failing agreement through the other methods for the settlement of disputes set out in Article 33 of the Charter of the United Nations, a compulsory dispute settlement system should be established. To that end, and in order to ensure that rule of law among nations acquired real meaning, all treaties should include a comprehensive system of third-party dispute settlement.

81. His delegation considered that there should be original State liability when individual liability was impossible to determine because the damage had been caused by unidentifiable authors. However, whenever possible, there should first be redress from the responsible private person and only residual State responsibility.

82. Liability should be extended to cover the concept of "global commons", as part of the broad objective of protecting the environment. Given the wide divergence of views, it would be wise to defer any decision on the subject.

83. With respect to chapter VI, his delegation noted that, at the last session of the Commission, further progress had been achieved on the question of the archives, publications, communications, fiscal immunities and customs duties of international organizations. The draft articles that had been referred to the Drafting Committee for consideration were in keeping with the existing practice of securing the maximum facilities for international organizations, subject to the legitimate requirements of the host State. There was little doubt that international organizations require inviolability and protection, provided that they were not excessive and did not encroach unduly on the domain of States.

84. Chapter VII was devoted to the third report of the Special Rapporteur and contained a review of the legal regime of the measures that an injured State could take against a State that had committed an internationally wrongful act. The Special Rapporteur's report made due reference to the norms of jus cogens and erga omnes obligations. In that regard, reprisals could not violate peremptory norms; that brought into focus the transformation of the topic of State responsibility from its traditional context of injury to aliens to the context in which the interests of international public order and of the international community must be taken into account. The Commission should ensure that due account was taken of the expectations of the international community and, in particular, States that had gained their independence after the classical rules of international law on the topic had been formulated.

85. With regard to chapter VIII, the Commission was fully aware of the need to keep its programme, procedures and working methods under constant review. During its forty-third session, particular importance had been attached to consideration of the Commission's long-term programme of work. In the debate held during the previous session his delegation had suggested that the

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Commission should consider, in the context of its long-term programme, the following issues: the implementation of United Nations resolutions and legal consequences arising out of their non-implementation, and the binding nature of Security Council resolutions in accordance with Article 25 of the Charter and the advisory opinion of the International Court of Justice on Namibia. In that respect, he was pleased to note that the Commission had included among possible topics for its long-term programme the legal effects of resolutions of the United Nations. As the Working Group on the Commission's long-term programme of work had noted, the resolutions of international organizations had become a fundamental element in the process of evolving rules of international law, and some of them often exercised greater influence in international relations than treaties. The question of the legal force of those resolutions, however, remained controversial. The Working Group recommended that, at the outset at least, consideration should be confined to resolutions of the United Nations, with emphasis on those of the General Assembly and the Security Council, as well as on their degree of binding force, their effects, the circumstances of their adoption and their content. His delegation strongly urged that the item should be included in the Commission's long-term programme of work. Consideration could also be given to the question of the legal content of the notion of jus cogens, or peremptory norms of international law, the existence of which had been formally recognized in the 1969 Vienna Convention on the Law of Treaties. That issue had been examined by various experts but had not received a detailed analysis in any international forum.

86. He noted with approval the work carried out by the Drafting Committee and the Commission's intention to coordinate its work with that of other United Nations institutions, regional organizations and scientific centres that dealt with subjects related to the Commission's programme of work. In that regard he noted his delegation's suggestion that the Commission should not only continue its fruitful cooperation with such regional bodies as the Asian-African Legal Consultative Committee, the Inter-American Juridical Committee and the European Committee on Legal Cooperation, but should also establish contacts and exchange views with the Movement of Non-Aligned Countries and the Commonwealth with regard to its work in the legal field. The changes in the international situation had given the Movement of Non-Aligned Countries greater scope to concentrate on issues and ideas relating to international law. Indeed, the United Nations Decade of International Law had had its origin in a suggestion by the Movement of Non-Aligned Countries. Similarly, the Commonwealth, which represented one of the world's principal legal systems, could make a vital collective contribution to the development of international law.

87. He noted that the Commission had made full use of the time and facilities available to it during its session, and he agreed that the usual duration of the session should be maintained. Sessions could be held without interruption, following the Commission's usual practice, or they could be divided into two parts, as was the practice in other United Nations bodies, if that was thought expedient.

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88. The twenty-seventh session of the International Law Seminar, dedicated to the memory of Paul Reuter, had been held with great success during the Commission's forty-third session. Thanks to the collaborative efforts of the Government of Brazil the latest Gilbert Amado Memorial Lecture had been delivered by the Minister of External Relations of Brazil.

89. The highlight of the Sixth Committee's work was the annual debate on the report of the International Law Commission. International law was constantly evolving, and that process must be guided by the Sixth Committee. For that reason, and in view of the recent developments in the world, the Sixth Committee should give impetus to the application of the rules of international law and the resolutions of the United Nations, as well as to the strengthening of the mechanism for third-party dispute settlements and to cooperation in combating terrorism and drug trafficking and in protecting the environment.

90. In his address to the General Assembly the President of Cyprus said: "We all know that a just world is one where international law is respected and applied. Therefore, we all have an obligation to apply the rule of law and the appropriate process of peaceful settlement of disputes, including recourse to the International Court of Justice, and to refrain from imposing the will of the stronger." Those words expressed the position which Cyprus had always maintained, for itself and for the world, on the role of international law in the United Nations.

91. Mr. SUN Lin (China) said that the question of jurisdictional immunities of States and their property was a sensitive topic which involved such fundamental principles of international law as State sovereignty and the equality of sovereign States. After the first reading, the comments by Governments had prompted the Committee to take a practical approach and produce a text that accommodated the positions of States. His delegation had always held the position, which it wished to reiterate, that the purpose of devising a legal regime governing jurisdictional immunities of States and their property was to reaffirm the principles of international law concerning the immunities of States and to enhance their effectiveness. The Commission might formulate exceptions to the principle of State immunity in order to strike a balance between the need to reduce and prevent the abuse of domestic judicial process against sovereign States and the need to find a fair and reasonable way of settling disputes. Measured against that criterion, the text of the draft articles adopted on second reading could be improved.

92. His delegation favoured the exclusion, in the definition of "State" in article 2, of entities set up by the State to engage in commercial transactions which had the capacity to assume civil liability and to acquire and dispose of property. Such State enterprises and corporations were legal entities with an independent legal personality.

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93. For the same reason, his delegation welcomed the addition of paragraph 3 in draft article 10, under which the immunity from jurisdiction enjoyed by a State would not be affected in any proceeding which related to a commercial transaction engaged in by a State enterprise or other entity which had an independent legal personality. That provision would help curb the abuse of judicial process against the foreign States to which the enterprises in question belonged.

94. Draft article 5 set out the main principle governing jurisdictional immunities of States and their property. His delegation supported the deletion of the phrase "and the relevant rules of general international law", as it could give rise to an unduly liberal interpretation of the draft article.

95. With regard to the title of part III, the Chinese delegation had always maintained that State immunity was a fundamental principle of international law based on State sovereignty and the sovereign equality of States. The alternative "Exceptions to State immunity" was the appropriate choice of title. Those who supported the alternative "Limitations on State immunity" were arguing that the principle of the jurisdictional immunity of States did not exist in international law, an argument that was unacceptable to the Chinese delegation. The current title, "Proceedings in which State immunity cannot be invoked", remained unsatisfactory. Both the United States Foreign Sovereign Immunities Act of 1976 and the United Kingdom State Immunity Act 1978 referred to "exceptions". The Chinese delegation wished to reiterate that, while it was necessary to envisage exceptions to the jurisdictional immunity of States, such exceptions must be kept to a minimum that corresponded to real needs arising in practice.

96. For the same reasons, the Chinese delegation supported the deletion from the original draft articles of article 16, "Fiscal matters", and article 20, "Cases of nationalization". The enactment and enforcement of fiscal regulations was the prerogative of sovereign States and fell within the domain of public law. As for cases of nationalization, such measures taken by a State within its territory were sovereign acts which did not allow of any interference by a foreign court. The treatment of cases of nationalization in the original text of the draft articles as exceptions to the principle of State immunity was inappropriate.

97. On the same basis, the Chinese delegation continued to object to the retention of article 12, "Personal injuries and damage to property". To allow the national court of a State to determine that an act was attributable to a foreign State violated the principles of sovereignty and sovereign equality. To allow proceedings before national courts against a foreign State would encourage irresponsible and abusive litigation. Compensation for physical injury to persons or physical damage to property could be sought through diplomatic channels or through insurance.

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98. Part IV dealt with State immunity from measures of constraint in connection with proceedings before a court. The position of the Chinese delegation was that immunity from measures of constraint against property of a State was a principle recognized in the theory of international law and consecrated by practice in international relations. To allow attachment, arrest and execution against property of a foreign State pursuant to a judgement by a national court would seriously disrupt inter-State exchanges and cooperation and generate tension in international relations. The Chinese delegation supported the basic principle expressed in article 18, that the waiver of State immunity from jurisdiction did not mean the waiver of State immunity from measures of constraint.

99. Mr. LACLETA (Spain) said that the term of the Commission's current membership had been brought to a very successful conclusion with the completion of the second reading of the draft articles on jurisdictional immunities of States and their property and the first reading of the draft articles on the law of the non-navigational uses of international watercourses.

100. Referring specifically to the draft articles on jurisdictional immunities of States and their property, the more important of those achievements, he said that Spain welcomed the Commission's recommendation to the General Assembly that the draft articles should be examined by an international conference of plenipotentiaries with a view to concluding a convention on the subject. While the draft articles were not perfect, they did offer a suitable basis for such an international conference.

101. The Commission had managed to strike a satisfactory balance in an area in which extreme and apparently irreconcilable positions had been taken. The first stage of the Commission's work, in which it had sought simply to reach a consensus on the limits to the absolute immunity of the State, had resulted in the formulation of texts in which the traditional principle of immunity was circumscribed with precise exceptions, generally worded in an acceptable manner, which guaranteed that a private citizen entering into a direct legal relationship with a foreign State would not be unprotected or unable to secure a judicial ruling in the event of dispute.

102. It had not been an easy task to reduce the enormous number of cases and decisions presented by the Special Rapporteurs and considered by the Commission to the eight articles of part III, which contained the exceptions to the fundamental principle of immunity. The interests of States, including those of the developing States, and those of individuals had been considered, as had the problem of the special case of diplomatic and consular representations.

103. In his contribution to the discussion of the report of the Commission on the work of its thirty-eighth session he had indicated that the Commission did not appear to have considered either the issue of how a State invoked immunity

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in the courts of another State or the issue of the authority called upon to decide, in the event of a dispute, whether in a specific case the principle of immunity should prevail or whether one of the permitted exceptions should apply. It was the current practice of some States for such a decision to be the responsibility of the judge of the State whose jurisdiction was in question (the State of the forum) and any challenge had to be settled in accordance with the legal rules of that State. In other words, it was the court of the State whose jurisdiction had been challenged which was responsible for the decision. In his delegation's opinion, a dispute of that nature constituted an international dispute and should be dealt with as such. It was true that the Commission had considered the question of how a State could invoke immunity, but articles 6, 8, 20 and 21, even when read in conjunction, as was necessary, did not solve the problem in a satisfactory manner.

104. A satisfactory solution could be provided only by a mechanism on the settlement of disputes which, as indicated in paragraph 26 of the report, the Commission considered could be looked at by the future conference of plenipotentiaries.

105. Mr. GODET (Observer for Switzerland) said that the draft articles on jurisdictional immunities of States and their property formed a sound basis for the work of the conference of plenipotentiaries recommended by the Commission. The proposed text would facilitate the universal embodiment of the trend in international law to limit, on the one hand, cases in which a State could invoke immunity before foreign courts and, on the other hand, the execution ofjudgements rendered against a State. The Commission's final text on immunity from jurisdiction was closely modelled on the solutions contained in the European Convention on State Immunity and, to a certain extent, combined the concepts of absolute and relative immunity. His delegation agreed with the general thrust of the principles set forth in parts II and III of the draft. On the other hand, it believed that the Commission's text on immunity from execution overly limited the power to apply exceptions to a State's property. While part III of the text devoted eight articles exclusively to cases in which immunity from jurisdiction could not be invoked, only two provisions appearing in part IV dealt with State immunity from measures of constraint. Thus, in that regard, the draft was somewhat imbalanced. In his delegation's view, immunity from execution should follow from immunity from jurisdiction, of which it was a corollary. While the Commission's draft did indeed contemplate exceptions to the general principle of immunity from measures of constraint, they were weak and allowed States too many opportunities to claim immunity from execution.

106. Under article 2, paragraph 1 (b) (ii), the term "State" included the constituent units of a federal State. The Commission had included that provision in order to take into account the special situation of some federal systems whose constituent units enjoyed the same immunities as a State but could not, on that basis, exercise sovereign authority. The scope of

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application of that provision was very broad, as it empowered all the constituent units of a federal State, without any distinction whatsoever, to invoke immunity. His delegation would have preferred a draft based on article 28 of the European Convention on State Immunity, which confirmed that individual states in a federal State did not enjoy immunity, while authorizing the federal State to formulate a declaration indicating that those individual states could invoke the provisions of the Convention.

107. The Commission had decided to delete the reference to the relevant rules of international law which had appeared in square brackets in the text of article 5 adopted on first reading, as it believed that any immunity or exception to the rule of immunity under the draft articles would have no effect on either general international law or the future development of State practice. While it was true that the draft articles elaborated by the Commission would not prevent the development of international law if their provisions were subsequently incorporated into a convention, the deletion of the reference in question would enable those States which became parties to the instrument to oppose the application of future international law, which seemed to be tending towards a growing limitation of immunity.

108. Under paragraph 2 (a) of draft article 10, commercial transactions between States were immune from jurisdiction, which was an exception to the principle set forth in paragraph 1 of that draft article. The commentary by the Commission stated that the expression "commercial transactions between States" indicated a transaction which involved all agencies or instrumentalities of the State within the meaning of paragraph 1 (b) of article 2. Certainly, the fact that commercial transactions effected by a State agency were not subject to the jurisdiction of the State of the forum must be recognized. Since in some countries whole sectors of economic activity were controlled by the public sector, the scope of the exception should have been limited.

109. Referring to exceptions to the rule that States were not immune from jurisdiction relating to contracts of employment, he said that, even if, in principle, the hypothesis set forth in paragraph 2 (c) of draft article 11 rarely arose, the fact remained that the employee who at the time of entering into the contract of employment was neither a national nor a resident of the State of the forum ran the risk of being denied all legal protection.

110. Article 16, paragraph 1, stated the principle that ships owned or operated by a State which were "used for other than non-government non-commercial purposes" could not invoke immunity from jurisdiction. From that it could be inferred that the provision did not apply to ships used exclusively on government non-commercial service, and the additional information contained in paragraph 2 therefore seemed redundant. Moreover, the phrase "other than government non-commercial purposes" had been introduced on second reading in paragraphs 1 and 4 in order to eliminate the problem of the dual criterion of "commercial and non-governmental" and "governmental

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and non-commercial" use. However, the problem had not totally vanished, for the question of the government and non-commercial character of a ship arose again in paragraph 7.

111. He reiterated that the exceptions to the principle of State immunity from measures of constraint (art. 18) were limited in the extreme. Moreover, article 19 greatly inhibited their scope in listing various categories of State property which were not subject to any measures of execution. Further, since as a result of the infelicitous introduction, on second reading, of the word "specifically" the list of categories of property was not exhaustive, part IV of the draft articles obviously offered States countless opportunities to invoke immunity from execution.

AGENDA ITEM 125: MEASURES TO PREVENT INTERNATIONAL TERRORISM WHICH ENDANGERS OR TAKES INNOCENT HUMAN LIVES OR JEOPARDIZES FUNDAMENTAL FREEDOMS AND STUDY OF THE UNDERLYING CAUSES OF THOSE FORMS OF TERRORISM AND ACTS OF VIOLENCE WHICH LIE IN MISERY, FRUSTRATION, GRIEVANCE AND DESPAIR AND WHICH CAUSE SOME PEOPLE TO SACRIFICE HUMAN LIVES, INCLUDING THEIR OWN, IN AN ATTEMPT TO EFFECT RADICAL CHANGES (A/C.6/46/L.4)

(a) REPORT OF THE SECRETARY-GENERAL

(b) CONVENING, UNDER THE AUSPICES OF THE UNITED NATIONS, OF AN INTERNATIONAL CONFERENCE TO DEFINE TERRORISM AND TO DIFFERENTIATE IT FROM THE STRUGGLE OF PEOPLES FOR NATIONAL LIBERATION

112. The CHAIRMAN said that following broad-based, lengthy consultations on the draft resolution to be adopted on international terrorism a consensus had been reached on the text set out in document A/C.6/46/L.4. If he heard no objection, he would submit the text for the Committee's consideration at the meeting on Thursday, 31 October, at which time a decision would be taken.

113. It was so decided.

The meeting rose at 1.10 p.m.